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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FOUR

LUCY SUTCLIFFE, as Trustee, etc.,

Plaintiff and Appellant,

v.

ELIZABETH ANN SUTCLIFFE,

Individually and as Trustee, etc.,

Defendant and Respondent.

A153516

(Marin County
Super. Ct. No. 1604106)

Lucy Sutcliffe¹ appeals from an order dismissing for lack of subject matter jurisdiction her petition to enforce various family trusts and to remove her sister, Elizabeth Ann Sutcliffe, as cotrustee or trustee of certain trusts. Elizabeth Ann contends the trial court properly dismissed the action for lack of jurisdiction and alternatively, under forum non conveniens principles. We conclude that the petition was dismissed improperly on either ground. We shall reverse and remand for further proceedings.

Background

In 1983, in Marin County, the parties' parents, Harry Sutcliffe and Elizabeth Donnan Sutcliffe, executed the Sutcliffe revocable inter vivos trust, as settlors and trustees. The trust was amended and restated in its entirety on December 2, 1999. The trust provided that upon the death of the first spouse, the trust would be divided into an irrevocable decedent's trust and a revocable survivor's trust. Article 11.4 of the Sutcliffe

¹ Because the parties share a last name, we refer to them by their first names for clarity and convenience, and not intending any disrespect.

revocable inter vivos trust reads, “This Trust Agreement is executed by Settlers and Trustees in the State of California and since Settlers and Trustees are domiciled in the State of California at the time of execution of this agreement it is agreed that the laws of the State of California shall be applicable in determining any question relating to the validity, interpretation or administration of this trust agreement and the various separate trusts created hereunder. . . .” The Sutcliffes placed into the trust, among other assets, their Mill Valley residence and an adjacent undeveloped lot.

Harry died in March 2007, leaving Elizabeth Donnan as the surviving spouse. Following Harry’s death, a decedent’s trust and a survivor’s trust were established with Elizabeth Donnan named as the sole trustee of each. Elizabeth Ann and Lucy were appointed as successor cotrustees for the decedent’s and survivor’s trusts. The Mill Valley residence was allocated to the decedent’s trust, but the record is unclear as to the initial allocation of the adjacent lot. In 2011, Elizabeth Donnan signed an amendment to the survivor’s trust naming her and Elizabeth Ann as cotrustees of that trust.

In 2012, Elizabeth Donnan and Elizabeth Ann moved to Hawaii and sold the Mill Valley residence. The proceeds of the sale were placed in the decedent’s trust. Lucy has at all relevant times lived and continues to live in Missouri.

In February 2016, Elizabeth Donnan revoked the survivor’s trust in its entirety and restated it under the laws of Hawaii, naming herself as grantor and Elizabeth Ann as the sole trustee and beneficiary. Elizabeth Donnan died on April 10, 2016. Upon her death, Lucy and Elizabeth Ann became cotrustees of the decedent’s trust.

On November 8, 2016, Lucy filed the present petition in the Marin County Superior Court alleging, among other things, a cause of action for partition of the Mill Valley lot. The petition alleges, “Petitioner is informed and believes and thereon alleges that the Mill Valley parcel of land, adjacent to the former family residence . . . , was among the assets of the decedent’s trust, which became irrevocable upon the death of the decedent, Harry Sutcliffe. Thus said real property should be divided equally among the beneficiaries of the decedent’s trust.” The petition also seeks to quiet title to the lot, alleging, “On June 30, 2009, Elizabeth [Donnan] executed and caused to be recorded a

trustee's deed whereby she purported to transfer said Mill Valley lot to herself as trustee of the Elizabeth D. Sutcliffe trust [the survivor's trust]. Petitioner contends that said transfer was of no force and effect because said lot belonged to the trust of decedent, not to the trust of Elizabeth." The petition also requests damages for Elizabeth Ann's alleged breach of fiduciary duty and seeks to remove her as trustee of the two trusts.

Elizabeth Ann filed objections and a verified response to Lucy's petition and her own petition seeking damages for Lucy's alleged breach of the decedent's trust. With respect to the Mill Valley lot, Elizabeth Ann's answer alleges that Elizabeth Donnan, as trustee of the Sutcliffe revocable inter vivos trust, conveyed the Mill Valley lot to the survivor's trust, not to the decedent's trust.

At the initial hearing on the petitions, the court issued a tentative ruling proposing, on its own motion, to dismiss the petition for lack of jurisdiction. The court explained that "jurisdiction belongs in Hawaii." Lucy opposed the tentative ruling. At the parties' request, the court continued the matter so the parties could engage in mediation, but noted that it was not conceding that jurisdiction belongs in California.

When the matter returned to the court approximately six months later, the parties briefed the jurisdictional issue. Elizabeth Ann disputed Lucy's allegation that the decedent's trust was administered in California and reported, apparently for the first time, that the lot had been sold in 2016, so that there was no California property held by either of the trusts.² The court dismissed the petition on the ground that "Marin County is not the proper jurisdiction for the Harry and Elizabeth Sutcliffe trust."

Lucy timely filed a notice of appeal.

Discussion

A superior court may exercise jurisdiction in trust proceedings on any basis not inconsistent with the California or United States Constitutions. (Prob. Code, § 17004; Code Civ. Proc., § 410.10.) A court may exercise jurisdiction over a trust having its

² Elizabeth Ann did not submit evidence of the sale and Lucy states in her appellant's brief on appeal that she "has not had an opportunity to look into the circumstances of that sale."

principal place of administration in California. (Prob. Code, §§ 17003, 17004.) Jurisdiction also may be exercised to determine matters concerning trust property, particularly land, located in California even if the principal place of administration of the trust is not in California. (Cal. Law Revision Com. com. (1990) Prob. Code, § 17004; 13 Witkin, Summary of Cal. Law (11th ed. 2018) Trusts, § 251.) A determination that a California court may exercise jurisdiction, however, “is not decisive if the exercise would be an undue interference with the jurisdiction of a court of another state which has primary supervision over the administration of the trust. [Citations.] This concept of primary supervision in the context of trust administration is a special application of the doctrine of forum non conveniens, which is recognized generally in Code of Civil Procedure Section 410.30.” (Cal. Law Revision Com. com. (1990) Prob. Code, § 17004.)

Contrary to Elizabeth Ann’s arguments, the court clearly had subject matter jurisdiction in this action. “ ‘ “The principle of ‘subject matter jurisdiction’ relates to the inherent authority of the court involved to deal with the case or matter before it.” ’ ” (*Barry v. State Bar of California* (2017) 2 Cal.5th 318, 324.) Elizabeth Ann argues, without citation to authority, that the court’s “jurisdiction over the decedent’s trust can only be supported by a finding that Marin County was the principal place of administration of the decedent’s trust.” As indicated above, however, the court may exercise jurisdiction in trust proceedings on any basis not inconsistent with the California or United States Constitutions. (§ 17004.) Here, the original Sutcliffe revocable inter vivos trust, the decedent’s trust and the now revoked survivor’s trust were all executed in California and expressly made subject to California law. The Mill Valley lot was transferred from the Sutcliffe revocable inter vivos trust to the survivor’s trust by a trustee’s deed recorded in California. If the Mill Valley lot is no longer held in trust, the sale of the lot occurred in California. It is also undisputed that the court has personal jurisdiction over both parties. Both sisters consented to the personal jurisdiction of the court by filing their own petitions in the Marin County Superior Court. (*Nobel Farms, Inc. v. Pasero* (2003) 106 Cal.App.4th 654, 658 [“United States Supreme Court has also

long recognized that when a nonresident plaintiff commences an action, he submits to the court's personal jurisdiction"].)

Although not necessary to support our decision, we do not necessarily agree with Elizabeth Ann that the decedent's trust is not administered in California. Under section 17002, subdivision (a), "The principal place of administration of the trust is the usual place where the day-to-day activity of the trust is carried on by the trustee or its representative who is primarily responsible for the administration of the trust." If the principal place of administration of the trust cannot be determined under subdivision (a), "it shall be determined as follows: [¶] . . . [¶] (2) If the trust has more than one trustee, the principal place of administration of the trust is the residence or usual place of business of any of the cotrustees as agreed upon by them or, if not, the residence or usual place of business of any of the cotrustees." (§ 17002, subd. (b).) Lucy's petition alleges that the decedent's trust is administered in Marin County and provides the address of her attorney as the place of administration. Elizabeth Ann's petition states that the court "has exclusive jurisdiction to hear this petition concerning the internal affairs of the decedent's trust." Absent evidence that any day-to-day activity relating to the decedent's trust occurs elsewhere, it appears that the cotrustees have selected California as the place of administration.

Hence, the court does not lack jurisdiction in any fundamental sense; it is competent and has "inherent authority" to hear the case. There are no territorial or other bars to its jurisdiction.

To the extent that the court's conclusion that California is not the "proper jurisdiction" for this action can be understood as an exercise of its discretion under the doctrine of *forum non conveniens*, the court abused its discretion. As set forth above, a California court may decline to exercise its jurisdiction "if the exercise would be an *undue interference* with the jurisdiction of a court of another state which has *primary supervision* over the administration of the trust." Nothing in the record suggests that other relevant proceedings are pending in Hawaii or that Hawaii is the superior forum for this dispute. While the survivor's trust was restated under Hawaiian law in 2016, the Sutcliffe

revocable inter vivos trust, which governs the allocation of property between the two sub-trusts, and the decedent's trust are subject to California law. Moreover, most of the significant events occurred in California and the parties clearly expressed a preference for California by filing their actions in California court.

Disposition

The order dismissing the petition is reversed.

POLLAK, P. J.

WE CONCUR:

STREETER, J.

TUCHER, J.